THE
MADRAS LAW JOURNAL.

I] MARCH [1939

SIR SRINIVASA VARADACHARIAR.

We offer our respectful congratulations to Sir S. Varadachariar on his elevation to a seat on the Bench of the Federal Court of India. When he was raised to the Bench of our High Court in 1934, he reached the highest goal of professional ambition. On the passing of the Government of India Act, 1935, a higher judicial appointment became available in India and he has now reached that higher haven. But for his hesitation over the suitability of a judicial career for one of his temperament, he might have been a Judge of the High Court for well over ten years. He has now been the recipient of the added honour of a knighthood. His friends have deep satisfaction in the fact that places and honours came to him unsought.

Sir S. Varadachariar began life in humble circumstances. With a brilliant academic career, he became early in life attached to Sir V. Bhashyam Aiyangar as almost a member of his household. Few know that his higher destiny checkmated and overruled the well-meant effort of his friends to get him appointed to a place in the clerical establishment of the High Court and saved him from the obscurity which would have been his portion had that effort succeeded. After Sir V. Bhashyam Aiyangar became judge he passed into the office of Sir P. S. Sivaswami Aiyar. His association with these two eminent men influenced and moulded him in the early years of his professional life. Shy and retiring, he might have long remained unknown. An article in the pages of this journal which was a critique on the judgments of the two greatest Judges of the time immediately arrested the attention of competent men to his learning and ability. His growth and progress in

the profession was slow and steady. It is said that slow growth indicates a longer career and the reaching of higher heights and Sir S. Varadachariar's life illustrates it. His advocacy showed constructive imagination. His presentation was lucid, at times subtle, and always fair. Unlike most lawyers he argued without making notes. Without conscious effort on his part to impress, he managed to make a deep impression on the Judges in the course of years. Sir Owen Beasley, C. J., had great respect and admiration alike for his intelligence and character. He once remarked that the statement of a principle by Sir S. Varadachariar made futile the citation of a vast and carefully collected array of authorities. Deeply religious by temperament and training, he acted steadfastly on principles which he laid down for himself as a man, as an advocate and as a Judge. A certain almost aggressive simplicity characterises his life outside Court. As a lawyer he seldom took up a case that he considered unjust or unarguable. As a Judge, he was painstaking and more patient than some of his friends expected from the clear decisiveness of his mind. Complaints have been heard that he came to Court with his mind made up and gave little chance to the argument of counsel. But he has not been unknown to change his mind when he was shown reason for doing so. In this respect, he was not like Sir V. Bhashyam Aiyangar who rarely changed his very carefully formed conclusions. Sir S. Varadachariar has given great satisfaction to the profession. He has a wide circle of friends in the Bar and on the Bench. The impression that he made on the present Chief Justice soon after his arrival in Madras and the deep personal attachment between him and Sir P. S. Sivaswami Aiyar are worthy of special mention. Not without deep feeling did his many friends at Madras separate from him.

We have no doubt that the high distinction he has achieved as a judge of the High Court will mark his career as a judge of the Federal Court also. The functions of the Federal Court are in the region of constitutional law, but are not in essential respects different from the functions of other judicial tribunals. We have heard expressions of doubt as to whether the judicial work in a High Court may not have the effect of tinging with narrow legalisms the decisions of those larger constitutional questions that will come before the Federal tribunal. Sir S. Varadachariar is a student of history. He has less faith in books than in deep

reflection. He cares and has always cared for depth rather than for breadth. And in the hours of leisure which the less strenuous life of a Judge gave him he has kept himself abreast of the times by careful and selective study. Even his innate conservatism has yielded to the compulsive quality of the time spirit.

This journal owes gratitude to Sir S. Varadachariar who was for twenty years its Editor and a worthy successor to the three first illustrious editors. All of them reached the highest places as public servants. We wish Sir S. Varadachariar long life and full period of service as Judge of the Federal Court.

Sir Alladi Krishnaswami Aiyar, Advocate-General, on behalf of himself and the other members of the Bar bid farewell to Mr. Justice Varadachariar on the eve of his departure from Madras as Judge of the Federal Court.

Sir Alladi Krishnaswami Aiyar said:—"In the course of the last few years, I had several occasions to bid farewell to Judges who retired from the Bench in this Court, but none so unique as the present, when I am saying good-bye to Your Lordship on your transfer to a wider and, may I say, a higher sphere of work. In taking leave to express our appreciation of your work both at the Bar and on the Bench I have necessarily to put some restraint on myself as I feel a certain amount of embarrassment by reason of the fact that you still continue to be a Judge, and some of us hope to appear and plead on occasions before you in the Federal Court and in the Supreme Court if, as it is hoped ere long, the Federal Court becomes the normal appellate tribunal from the High Courts in this country.

"I can claim to have known Your Lordship's work at the Bar intimately almost from the commencement of my professional career. Very early in your career at the Bar, by your singular devotion to the study of law, you acquired a reputation for learning and keen grasp of the principles of law. In the formative years of your professional career you had the singular good fortune of coming under the influence of some of the ablest and most notable names at this Bar, Sir V. Bhashyam Aiyangar, Sir P. S. Sivaswami Aiyar, who happily is still with us, and the late Mr. V. Krishnaswami Aiyar, whose broad-based intellectual generosity and appreciation of talent, wherever it was to be found, is too well known to need mention.

"At a period when many a young practitioner's time is taken up with the struggle to make a living in this most competitive of

professions, Your Lordship was able to pursue your legal studies with zeal and single-minded devotion by working in the Chambers of your learned leader, Sir P. S. Sivaswami Aiyar, and assisting him in the conduct of difficult causes involving complicated and intricate questions of law.

"Your intimate connexion with the Madras Law Journal almost from the commencement of your professional career and your editorship of that Journal for several years have won for you a prestige scarcely rivalled, excepting perhaps by the illustrious first founders of the Journal.

"After the first few years, your talents came to be recognised in the Profession and attracted the litigant public of this Presidency; your advocacy arrested the attention of the Judges, before whom you appeared, and you sprang to fame and distinction in the forensic field outdistancing most of your compeers at the Bar.

"By your learning and ability, your penetrating intellect, your mastery of the intricate details of every case, your suave manners, the reputation you earned for scrupulous and fair presentation of your clients' cause and your exposition of the legal principles involved in it, you attained a position at the Bar which made some of your compeers occasionally feel a sense of handicap when appearing against you before some of the Judges of this Court.

"It is a source of great pleasure and pride to me that in our early years at the Bar we together assisted and instructed leading counsel in some of the important cases and in later years I had the privilege of opposing you on several occasions. From my intimate acquaintance with you at the Bar, I can bear testimony to your uniform courtesy, kindliness of spirit and the great forbearance you showed at any lapses on the part of your opponents. My professional contacts with you have served to accentuate my esteem and, may I add, affection for you.

"When, after your distinguished record at the Bar, Your Lordship was raised to the Bench in March, 1934, the universal feeling was that the right man was in the right place and that nature specially equipped you for a distinguished judicial career. Hardly had you taken your seat on the Bench, when the profession began to realise that a new vigour had been imparted to every Bench in which you took part.

"While you were not oblivious of the changing conditions and the environment of a new age your career on the Bench was not marked by any desire or tendency to give any particular direction to the development of the law, the main function of the Judge

being to administer the law as he finds it and not assume the role of a legislator. In your Court no case suffered or could suffer for bad or tactless advocacy. The complaint could, if at all, only be that you knew every aspect and detail of the case and left little scope for the Advocate's art in the matter of the exposition of the law or in unravelling the complicated facts of a case.

"I hope I am not guilty of any impropriety when I say that the impression gained ground among the clientele and the profession that any case before you was in safe hands and that it could not suffer for want of skill in advocacy. It is not always that a brilliant lawyer makes a distinguished Judge, but in your case your legal learning was subordinated to your passion for justice. An unfailing courtesy, an artless simplicity without the least sacrifice of judicial decorum and dignity held the admiration and friendship of all that came in contact with you.

"Accumulation of arrears in this Court, the obvious necessity for speedy despatch of judicial business, the multiplication of case-law with as many as 11 High Courts at work in different parts of India and a continuous stream of decisions of the Judicial Committee do not afford much scope for a Judge to devote sufficient time to the writing of erudite judgments with a punctilious regard to form and nuances of style. But in spite of the prevailing tendencies of the times, even within the comparatively short period of five years, Your Lordship has delivered many leading and learned judgments in several departments of the law, which may well stand comparison with some of the great judgments of the past.

"There is hardly a Full Bench decision in this Court within the last four years in which you have not taken part.

"The new sphere in which you are entering will give ample scope to your great legal and scholarly attainments and enable you to make a lasting contribution to the jurisprudence of this country in the constitutional field and in the field of private law if and when the Federal Court is invested with ordinary appellate jurisdiction.

"The Madras Bench is distinctly the poorer on your being taken away from our midst and it is not easy for any one to fill your place. But we shall not grudge the benefit of your services to a Higher Tribunal.

"The Bench and the Bar are equally proud of the position which you have been called upon to fill, and the good wishes of the Bar go with you in your new sphere of work."

Mr. Justice Varadachariar's Reply.

I am glad of the opportunity given me to bid good-bye to you all. I cannot be sufficiently grateful to the Advocate-General for all the kind things that he has said of me and my very close acquaintance with the Advocate-General is a source of great embarrassment to me in referring to them in detail. There is, however, one part of his speech to which I can refer without any embarrassment and indeed with the greatest satisfaction, namely, to acknowledge in as emphatic a term as possible and as openly as I can the debt of gratitude that I owe to some of the leaders under whom it had been my privilege to learn and to work. I may almost say that their example had been the loadstar of my life and it was their help and encouragement which had made it possible for me to even enter the profession and afterwards to find my way through it. The statements contained in the other parts of the Advocate-General's speech, it is not for me to canvass and I would leave it to the audience, excluding myself, to decide how much of it they can accept at their face value.

Next to acknowledging my obligations to my '*gurus*' in the profession, I have an equally pleasant acknowledgment to make to the numerous members of the Bar, both old and young, whom I had the privilege to come in contact with. Their attachment to me was due more to their kind nature than to anything in me. I hope that nobody would mistake me when I say that in the earlier years of my life in the Bar the Andhra friends took to me more heartily than others. It had always been one of the happiest memories in my life. In the latter years of my career, it had been my special privilege and pleasure to have been treated perhaps even more kindly than I deserved by many learned Judges before whom I had to appear.

After I became a Judge, my position was made even happier by the honoured colleagues with whom it had been my privilege to sit. My brother, Mr. Justice Pandrang Row, used to refer to me as his elder brother; sometimes even behind that humorous remark I could detect an element of truth. My relations with my colleagues have been of the most cordial character. More than all, I am under a special obligation to the two Chief Justices with whom it has been my good fortune to work. The fact that Sir Owen Beasley has now left this Court is no reason why I should not acknowledge in the most generous terms the extreme kindnesses which were extended to me on all occasions. After my Lord the present Chief Justice assumed office, I have been treated with even more kindness and consideration than I could have expected from a life-long friend.

I have also received the most loyal help and co-operation from the officers of the High Court.

I now wish to deal with my relations with the Bar. Before doing so, may I say a word or two of explanation or even apology. I am particularly gratified by the reference which the Advocate-General made to what the Bar felt when they had occasion to appear before me. I cannot conceal from myself the fact that there had been several occasions when I had sorely tried the patience of the members, but I can assure you that such occasions were the result of what I have always conceived as a common effort in which we are all engaged—an effort to find the truth and to do justice. I believe that members of the Bar would have noticed on many occasions my face betraying the struggle within me—the struggle to get at the truth. I would like to take this opportunity of making an unreserved apology for any offence that I might have unwittingly given on any occasion. But I am happy to think that such occasions have been comparatively few. On the other hand, my memory of these five years is almost a continuous memory of a happy co-operative endeavour between the Bench and the Bar to do justice according to the best of our lights.

If I may repeat, without any breach of confidence, the appeal that I made to my brother Judges yesterday, I would say that I have always desired, and I hope I shall not desire in vain, the utmost cordiality and co-operation to exist between the Bench and the Bar. It naturally requires certain qualities in those who sit on the Bench and certain qualities in those who are in the Bar, to secure the maximum cordiality. Every one of us realises the supreme importance of the task which the administrator of justice is concerned with. And it has always been the ambition of the Bar to be regarded as a limb in the administration of justice and not merely paid agents. If the Bar will only be true to that ideal and tradition, I see no reason why the Bench should not recognise that character of the Bar and should not appreciate the endeavours of the Bar from that point of view.

In this connection, I recollect an incident which has always stood out before me as marking the high water-mark in professional idealism. Even at the time the incident happened, it created a stir. In a case which my leader, Sir P. S. Sivaswami Aiyar, had to argue before Sir S. Subramania Aiyar and another learned Judge, my leader appeared for the respondent and he was aware of a Privy Council case which, if quoted, the case would go against him and which his opponent had not stated. My leader could not sleep the whole night, because he was torn by a sense of conflict between his duty to his client and

his duty to the Court as an Advocate. He consulted friends and ultimately he pointed out the case to the Bench and that settled his case. I have referred to that point to emphasise the fact that, while the gentlemen of the Bar owe a very serious responsibility to their clients, they also owe an equally responsible duty to the Court and that, if the Bar wish that it should be recognised as a necessary and an honourable limb in the administration of justice, it must find some way of reconciling these two apparently irreconcilable duties. All theories about the traditions and the ideals of the Bar practically relate to this apparently irreconcilable conflict of duties I have no doubt that the estimation in which the Bar is held by the Bench will depend upon the realisation of the Bar upon this aspect of this question. It is far from me to suggest that the Bar should, in the slightest degree, depart from the trust which the clients impose in them, but just as there is such a thing as presumption of knowledge of law even by the most ignorant persons, the traditions of the profession presume that every client, when he engages the services of a Counsel, knows that Counsel is in a position of trust not merely to himself but also to the Bench. I am emphasising this because of my anxiety that the Bench and the Bar should feel that they owe a common duty to the public in the matter of administration of justice and that the best co-operation between them can be attained only to the degree to which the Bar realises this aspect not merely theoretically but as a matter of day-to-day conduct.

I need hardly expatiate upon the reputation which the Madras Bar has attained for efficiency and character. We have had comparatively a short existence, when we think of the life of the Bar in countries like England. But within the short period of its existence, the Madras Bar has had the advantage of professional idealism, practised by eminent members of the English Bar such as Mayne and Norton and latterly we have had the example of veterans who could hold their own with any member of any Bar like Sir V. Bhashyam Iyengar, V. Krishnaswami Aiyar, Sir S Subramania Aiyar and P. R. Sundara Aiyar. Even on the Original Side, we had eminent men like Anandacharlu. The tradition has been handed down to us by stalwarts and giants and it is no wonder that our Bar stands to-day in the highest estimation in the world; but the great heritage only adds to our responsibility to safeguard it properly and to hand it down to posterity, if not improved, at least undiminished. I am emphasising this particularly in view of the unfortunate conditions prevailing to-day.

I do not wish to dwell upon the most gloomy side of the life of the Bar as it obtains at the present day. It is common knowledge

that the difficulties particularly of young men are indescribable. What remedy can be found has been seriously considered by some of our eminent men. The latest contribution to the subject was the speech of Sir P. S. Sivaswami Aiyar the other day. One is bound to feel that speeches have not carried us very far, at any rate, when it comes to rupees, annas and pies. I feel it my duty to warn younger members not to give way to despair even during the gloomy days. After all, we are hoping for better days ahead and if, in the meanwhile, you lower the ideals or the standards, the high place which you now enjoy will certainly go down. In these critical days, it behoves the Bar to be all the more careful to see that this reputation is kept up untarnished.

I would like to refer to my disappointment at the growing lack of interest in the theoretical study of Law. I had been told when I broached the subject to some of my friends that there was a close interaction between the Bench and the Bar even in that matter and if the Bench did not very much care for theoretical study and discussions, it was hardly worth the while to expect the Bar to do that. As the Advocate-General had said, the Bench is under a great handicap in these days in the matter of pressure of work and of time. It is therefore too much to expect them to indulge in theoretical discussions. But I do not think that that shows indifference to theoretical discussions. The Bar, at any rate the younger section, have abundant leisure and I would appeal to them to cultivate their theoretical knowledge. It is the ambition of many to fill the position which the Advocate-General is now holding in the profession. That is a very laudable ambition, but I would tell them to go some day to the Advocate-General and ask him in his leisure hours how many dusty volumes and how many old English reports he had pored over. One cannot expect to have the fruit without the labour. It might be said that even with the labour, there would not be any fruit now-a-days. But I assure them that labour will always be rewarded. Take it from my own life as to how conscientious endeavour will not go in vain. People may differ as to the quantum of reward. That is all the appeal I venture to place before you in all humility and with all confidence that that appeal will not go in vain. I do not wish to preach any homily, but I am so jealous of the reputation of the Bar and so much pressed by the duty that we owe to the great leaders who have adorned this Bar, that I thought that I will not be misunderstood if I emphasised this aspect of the duty which the Bar of the present day owes both to the past and to the future.

JOTTINGS AND CUTTINGS.

Lord Justice Greer's Retirement.—While it was generally known that Lord Justice Greer, the senior of the Lords Justices, had for some time contemplated retirement, that intention, now that it has become ***un fait accompli***, will be received with great regret by the whole legal profession. He will indeed be greatly missed in Court of Appeal No. 2, where for the past few years he has been the presiding Lord Justice, for to a masterly grasp of the law he united a kindly human feeling towards all who practised before him or who otherwise came in contact with him. To all he was the perfection of courtesy, and this was once again manifested in his farewell statement in court in which he said that he had always endeavoured to treat the judgments of the King's Bench Judges—those of the Chancery Judges rarely, if ever, came to Court of Appeal No. 2—with the greatest courtesy, holding, as he did, that it was most undesirable that anything should be said which might detract from the weight that should be attached to their decisions. This trait was eminently characteristic of his kindly heart, and was indeed the very antithesis of that taken by some of those who in the past have sat in the Court of Appeal, and who seemed to take a malign delight in ridiculing the alleged lack of law and reason in the pronouncements which it fell to them to review. It was further an additional instance of the kindliness of the Lord Justice that in his valedictory observations he did not forget to thank the two ushers of the court, who had reduced as far as possible the physical handicap through arthritis from which he suffered, by providing him without delay with the books of reference necessary to be consulted. Incidentally he mentioned that it was only on the strong advice of the late Lord Justice Scrutton that he had agreed to leave the King's Bench Division and become a Lord Justice. This, we may say, was not the least of the many services that great lawyer rendered to the public. A distinguished lawyer himself, with, perhaps, a predominance of the ***fortiter in re*** over the ***suaviter in modo***, Lord Justice Scrutton realised the juristic and personal worth of the Lord Justice who has now retired.—*S.J., 1938, p. 857.*